

## **Exhibit 12: Excerpts of Deposition of Garlin McLellan**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 NORTHERN DIVISION  
4  
5

\* \* \* \* \*

6 HAZEL ROBY, as Administratrix  
7 of the Estate of RONALD TYRONE  
8 ROBY, Deceased,

Plaintiff,

9 VS.

10 BENTON EXPRESS, INC., et al.,

11 Defendants.  
12

\* \* \* \* \*

13  
14  
15 The testimony of ALBERT GARLIN McLELLAN,  
16 taken at Bozeman, Jenkins & Matthews, 114  
17 East Gregory Street, Pensacola,  
18 Florida, on the 5th day of October, 2005,  
19 commencing at approximately 11:15, o'clock,  
20 a.m.  
21  
22  
23

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1 A No, I did not.  
 2 Q Any reason why you didn't make one that  
 3 Friday?  
 4 A I took off that night.  
 5 Q You just took off?  
 6 A That's correct.  
 7 Q Is it any Fridays where both you and  
 8 Craig make runs?  
 9 And I'm sorry, I may have not heard you.  
 10 You may have already answered, but I'm not sure. And  
 11 my question was, are there any Fridays where you and  
 12 Craig both make runs to Atlanta?  
 13 A No.  
 14 Q So, either one of you all go to Atlanta  
 15 or the other one don't?  
 16 A The Atlanta run is my regular run.  
 17 Q Okay. Any -- and Craig would do it  
 18 whenever you took off?  
 19 A Right, whenever I wanted off and he was  
 20 available and had the time to do it, he did it.  
 21 Q Okay. Now, when Craig left on that  
 22 Friday for -- to do the run, your regular run, did  
 23 you have any contact with Craig on Friday or

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1 Saturday?  
 2 A No.  
 3 Q Did you have any contact with anybody  
 4 concerning Craig on either Friday or Saturday?  
 5 A No.  
 6 Q Did you have any contact with anybody on  
 7 Sunday concerning Craig?  
 8 A Yes.  
 9 Q And on Sunday, did you have -- who did  
 10 you have contact with concerning Craig?  
 11 A Craig.  
 12 Q On Friday -- that Sunday when you  
 13 actually talked with Craig, Craig directly, you had  
 14 not talked to Glenn or Craig before then?  
 15 A No.  
 16 Q And prior to that Sunday, had you had any  
 17 information or had any reason to even hear anything  
 18 about where Craig was?  
 19 A No.  
 20 Q Okay. So, on Sunday, at some time, you  
 21 had direct contact with Craig?  
 22 A Yes.  
 23 Q And I think you said -- I think it's

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1 clear that you said prior to your direct contact with  
 2 Craig, you had not had any conversation with anybody  
 3 about Craig?  
 4 A That's correct.  
 5 Q Okay. So, on Sunday, you had a  
 6 conversation with Craig about what time?  
 7 A Around 10 minutes till 5:00 or five  
 8 minutes till 5:00.  
 9 Q And that's P.M.?  
 10 A P.M.  
 11 Q Okay. Sunday, 5:00 P.M., you had contact  
 12 with Craig. And as of Sunday, 5:00 P.M., when you  
 13 had contact with Craig, would you have still  
 14 considered him a friend at that time?  
 15 A Yes.  
 16 Q And all the things I asked you before  
 17 about him being a good employee, would you have  
 18 considered Craig a good employee still at that point  
 19 after your 5:00 P.M. conversation with Craig on  
 20 Sunday?  
 21 A Yes.  
 22 Q And you would have considered him still a  
 23 good guy?

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1 A Yes.  
 2 Q Nothing had changed about -- to your  
 3 knowledge, about Craig that would have made him not a  
 4 good Benton Express employee?  
 5 MR. BROCKWELL: You're talking about  
 6 prior to the phone call or during the phone  
 7 call or after the phone call?  
 8 MR. BOONE: Yeah. Let me ask the  
 9 question. Let me just go ahead and go  
 10 forward.  
 11 MR. BOONE:  
 12 Q So, at -- at 5:00 or five minutes to 5:00  
 13 when you talked to Craig, where -- did Craig call you  
 14 on your personal cell phone?  
 15 A Right. He called me on the walkie-talkie  
 16 or direct connect or whatever you want to call it.  
 17 Q On your cell phone?  
 18 A That's correct.  
 19 Q Which would have been at that PIN number  
 20 186 asterisk 112 asterisk 19311?  
 21 A Yes.  
 22 Q And at that time, when your friend Craig  
 23 called you, what did he tell you?

15 (Pages 54 to 57)

1 A He wanted to know if I could run the  
 2 Tallahassee run, which was his regular run.  
 3 Q Okay.  
 4 A And that's what he asked me.  
 5 Q And what did you tell him?  
 6 A I told him yes, I was backing under the  
 7 trailer right then.  
 8 Q Okay. And so, on that Sunday, at 5:00,  
 9 you were about to do Craig's Tallahassee run?  
 10 A Yes.  
 11 Q All right. Anything else you and Craig  
 12 talked about?  
 13 A During that conversation?  
 14 Q Yeah, during that conversation.  
 15 A Yes. I asked him where he was at. And  
 16 he said he was still hung up in Atlanta.  
 17 Q All right. So, at your -- when you  
 18 talked to him at 5:00 on Sunday, he told you he was  
 19 still in Atlanta?  
 20 A Yes.  
 21 Q And did y'all talk -- did y'all talk  
 22 about anything else other than the fact he told you  
 23 he was still in Atlanta?

1 A Yes.  
 2 Q And what else did y'all talk about?  
 3 A I asked him what did he mean by being  
 4 hung up in Atlanta. And he said that him and his  
 5 wife had a big argument and he just wanted to show  
 6 her that he could leave her. And I asked him, well  
 7 -- well, I told him, I said, well, it kind of  
 8 backfired on you because she has been over here  
 9 looking for you and she got the terminal manager  
 10 involved and he had to call the terminal manager in  
 11 Atlanta and then they had to contact the police to  
 12 put out a BOLO on him.  
 13 Q And that's what you told Craig?  
 14 A Yeah, I told him that and I told him he  
 15 needed to call Glenn right away and to call his wife  
 16 and let her know he was all right, and he said that  
 17 he was staying at his aunt's house in Atlanta.  
 18 Q And did you -- do you know what phone --  
 19 do you know if Craig was calling you from her  
 20 physical phone or was he calling you from a cell  
 21 phone?  
 22 A Uh --  
 23 Q Well, let me strike and start over.

1 Do you know if Craig was calling you from  
 2 like the phone at that house he was at or on a cell  
 3 phone?  
 4 A Cell phone.  
 5 Q And do you know what type of cell phone  
 6 Craig had?  
 7 A It was a company phone.  
 8 Q He had a company phone?  
 9 A Yes.  
 10 Q And that was a Nextel phone?  
 11 A Yes.  
 12 Q And how do you know he was on the company  
 13 Nextel phone?  
 14 A Because he called me on direct connect.  
 15 Q Okay. Could he have not have called you  
 16 on direct connect from any other cell phone, like  
 17 another personal cell phone?  
 18 A I have no idea.  
 19 Q Okay. But your best thought was and your  
 20 best understanding was he was on the company Nextel  
 21 two-way phone?  
 22 A Yes.  
 23 Q And were you aware before that day that

1 he had a Nextel two-way phone?  
 2 A A company phone, yes.  
 3 Q Okay. And he said he was at his aunt's  
 4 house?  
 5 A Right.  
 6 Q His aunt's house?  
 7 A At his aunt's house.  
 8 Q Okay. And do you have any idea where his  
 9 aunt lived?  
 10 A No, sir.  
 11 Q Did you ever tell anybody else what  
 12 Craig told you, that he was at his aunt's house?  
 13 A Yes, I told the terminal manager.  
 14 Q And that was Glenn Clark?  
 15 A That's correct.  
 16 Q Okay. Now, let's go through exactly what  
 17 Craig told you one more time because you kind of said  
 18 a lot. It may have been pretty simple, but I want to  
 19 make sure I got it all.  
 20 Craig - conversation. Craig told you he  
 21 was hung up in Atlanta?  
 22 A Yes, he called me on direct connect and I  
 23 keyed up and told him to go ahead, and he said, yeah,

1 Garlin, I want to see if you can run that Atlanta for  
 2 me tonight. And I said, yeah, I'm backing up under  
 3 the trailer right now. And I said, where are you at?  
 4 And he said, well, I'm still hung up in Atlanta. I  
 5 said, what do you mean hung up? He said, well, it's  
 6 like this, he said, me and my wife got in a big  
 7 argument and I just wanted to show her that I could  
 8 leave her. And I told him, well, it kind of  
 9 backfired on him because she's out looking for him,  
 10 she got ahold of the terminal manager, and since he  
 11 wasn't back, the terminal manager had to call up to  
 12 Atlanta and get them involved, and so they had to --  
 13 I guess the Georgia Highway Patrol was on the lookout  
 14 for him and probably the Alabama Highway Patrol was  
 15 on the lookout for him. And he said he was staying  
 16 out at his aunt's house.  
 17 Q Okay.  
 18 A And I told him, well, he needed to call  
 19 Glenn and he needed to call his wife, because didn't  
 20 nobody know where he was at. And he said, yeah,  
 21 okay, I'm going to do that right away. And I said,  
 22 okay. He said, but my phone's about dead. I said,  
 23 well, call them right now. And that was the end of

1 our conversation.  
 2 Q Do you know if Glenn had a Nextel phone?  
 3 A Who had?  
 4 Q He did?  
 5 A I didn't understand the question.  
 6 Q I'm sorry. Did Glenn have a Nextel  
 7 two-way phone?  
 8 A Yes, he has one.  
 9 Q Did you have Glenn's PIN number?  
 10 A Yes, I do.  
 11 Q Did Craig -- do you know if Craig had  
 12 Glenn's PIN number?  
 13 A That, I don't know.  
 14 Q Okay.  
 15 A I'm -- I just don't know.  
 16 Q Okay. And he told you that his phone was  
 17 about to go dead?  
 18 A Yes.  
 19 Q Did he tell you anything about when he  
 20 was going to head back?  
 21 A No.  
 22 Q Did he tell you anything that would make  
 23 you think he wasn't going to head back?

1 A No.  
 2 Q When you -- after the phone conversation,  
 3 did you expect that Craig was going to be heading  
 4 back to Pensacola at some point in the near future?  
 5 A Yes.  
 6 Q And did you know whether or not Craig had  
 7 picked up the load in Atlanta during that  
 8 conversation?  
 9 A No, I do not.  
 10 Q Did you know who -- did you know Craig's  
 11 aunt's name?  
 12 A No.  
 13 Q And when I say did you know her name,  
 14 meaning from any conversations you ever had with him,  
 15 did you -- had he ever mentioned his aunt?  
 16 A No.  
 17 Q Did he tell you her name at that time?  
 18 A No.  
 19 Q Did he tell you where she lived?  
 20 A No.  
 21 Q So, the only reason -- your understanding  
 22 of the only reason Craig was delayed was simply  
 23 because he was trying to make a point to his wife,

1 who you had gathered he was in a dispute with?  
 2 A Yes.  
 3 Q And he was just trying to show her that  
 4 -- you know, that -- you know, that -- well, he was  
 5 just trying to make a point to her, I guess is what  
 6 you said?  
 7 A Yes.  
 8 Q And you -- from your communication with  
 9 him, it had nothing to do with being mad at Benton  
 10 Express? From your conversation with Craig, you  
 11 would agree that it had nothing to do with being mad  
 12 with Benton Express?  
 13 A No.  
 14 Q And from your conversation with Craig, he  
 15 said nothing bad about Benton Express, did he?  
 16 A No, he never said anything bad.  
 17 Q And from your knowledge of Craig, you  
 18 would -- would you agree with me from your experience  
 19 with him -- and you told me you considered him a  
 20 friend. You would agree with me that he was happy  
 21 with his job at Benton Express?  
 22 A Yes.  
 23 Q Do you know if Craig was in any way

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1 A I can't -- I can't remember anything.  
 2 Q Okay. So, now going to --  
 3 A I'm sure you can.  
 4 Q -- the 5:00 o'clock call. And I think  
 5 we're going to be near a break because I think I've  
 6 went through it thoroughly, but I'm just trying to  
 7 make sure if that refreshes your recollection. But  
 8 at 5:00 o'clock when you called Craig -- when Craig  
 9 called you, did you -- did you mention anything to  
 10 Craig about a BOLO report?  
 11 A Yes. I told him that they had -- the  
 12 Georgia police was probably looking for him. But I  
 13 didn't know that they actually was. I just told him  
 14 that so it would maybe speed him up a little bit.  
 15 Q So, you didn't -- nobody had told you  
 16 that, you just told him that kind of trying to scare  
 17 him?  
 18 A Yeah, to sort of get him on the run, get  
 19 him on the move.  
 20 Q Did he tell you anything that made you  
 21 think that he wasn't about to get on the move?  
 22 A No.  
 23 Q Did he tell you anything that made you

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1 think he wasn't about to get on the move and head  
 2 back to Pensacola?  
 3 A No.  
 4 Q And so -- so, when you used that term  
 5 "BOLO report" to Craig, did you -- did you even know  
 6 what it meant?  
 7 A Not really.  
 8 Q And do you know if Craig knows what it  
 9 meant?  
 10 A I have no idea.  
 11 Q Do you know if Craig has a police scanner  
 12 and have ever heard that term before?  
 13 A No, I don't know that.  
 14 Q Do you know if Craig has a police  
 15 scanner?  
 16 A I have no idea.  
 17 Q Okay. So, I think you told me everything  
 18 you talked to about Craig; is that right?  
 19 A I hope so.  
 20 Q One thing I want to try and get clear is,  
 21 your attorney may have -- the attorney there for  
 22 Benton Express may have it with him and he may not,  
 23 but you will -- I'm sure you're going to recall this.

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1 Did you at any time take any notes of your  
 2 conversation with Craig?  
 3 A I never took any notes.  
 4 Q Did you write any notes?  
 5 A I write a note.  
 6 Q And when you wrote that note, it would  
 7 have been after you hung up from Craig?  
 8 A No, it was Monday morning when I got back  
 9 to the terminal from Tallahassee. And Craig's pickup  
 10 truck was still there, so I wrote him a little note  
 11 and put it on his driver's side window so he could  
 12 see it.  
 13 Q Okay. So, you would have wrote that note  
 14 after you returned from Tallahassee?  
 15 A That's correct.  
 16 Q And I gathered from you, because I've  
 17 asked these questions over and over, about three  
 18 times, just trying to make sure, after that 5:00  
 19 o'clock call -- that 5:00 -- well, strike that.  
 20 That 5:00 o'clock call with Craig and  
 21 that 8:00 o'clock call with Glenn, both on Sunday,  
 22 8:00 A.M. with Glenn, 5:00 P.M. with Craig --  
 23 A Uh-huh.

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1 Q -- I gather that you talked to nobody  
 2 else about Craig on that Sunday?  
 3 A That's correct.  
 4 Q However, even though you hadn't talked to  
 5 anybody else about Craig on that Sunday, when you got  
 6 back and saw his truck, you wrote that note and put  
 7 it on his truck window?  
 8 A Yes, because it was like 1:00 o'clock and  
 9 he still had time to get there before they opened up.  
 10 So, I wrote it in case he came up after I went home.  
 11 Q So, you would have returned about 1:00  
 12 o'clock A.M. Monday morning?  
 13 A From Tallahassee. I got back about 1:00  
 14 o'clock, yeah.  
 15 Q Yeah. You would have went to  
 16 Tallahassee, dropped off a load; is that right?  
 17 A Yes.  
 18 Q And you would have left about what time  
 19 on Sunday?  
 20 A Going to or coming from?  
 21 Q Going -- leaving Pensacola, when you left  
 22 Pensacola to go to Tallahassee, what time would you  
 23 have left on that Sunday?

22 (Pages 82 to 85)



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1 A B-O-Y-I-N-G-T-O-N.  
 2 Q And are there any Boyingtons in Alabama?  
 3 A Yes.  
 4 Q Okay. Any other last names?  
 5 A None that I know of.  
 6 Q Okay. Now, to wrap up, hopefully, after  
 7 one or two other minor areas. Did anybody give you  
 8 any instructions on what to specifically say to Craig  
 9 if you talked to him?  
 10 A No.  
 11 Q Did anybody tell you to specifically call  
 12 Craig?  
 13 A No.  
 14 Q The next thing after your 5:00 o'clock  
 15 call with Craig, the next time you heard anything  
 16 about Craig, was when on Monday at, I think you said,  
 17 around 2:00 o'clock you found out from, I guess,  
 18 Glenn Clark that he was involved in a wreck?  
 19 A That's correct.  
 20 Q Okay. Let's talk about if you would have  
 21 ran this Atlanta route, your normal Atlanta route  
 22 back to Pensacola. When you come there on Friday  
 23 evening, I guess around between 5:00 and 7:00, do you

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1 Q Would it ever be an occasion where it  
 2 would have taken in excess of six hours?  
 3 A Only if there was a major accident and  
 4 had the traffic blocked.  
 5 Q Okay. Do you have a governor on your  
 6 truck that you drive for Benton Express?  
 7 A Yes.  
 8 Q And what is your governor set at to --  
 9 what is your governor set at at the maximum speed  
 10 your truck can go?  
 11 A 72.  
 12 Q Yours is set at 72?  
 13 A Yes.  
 14 Q Do you know if various Benton drivers,  
 15 theirs are set at different settings?  
 16 A I have no idea.  
 17 Q But yours is set at 72?  
 18 A That's correct.  
 19 Q And you know that for a fact?  
 20 A Yes, sir.  
 21 Q Have you ever had it adjusted?  
 22 A No.  
 23 Q Who set it for you?

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1 have to see anybody?  
 2 A I'm not -- I'm not sure on what you mean  
 3 by the time.  
 4 Q On Friday, I know -- I know that I have  
 5 seen from records that Craig ran that route on a  
 6 number of occasions and I guess it's when you were  
 7 taking off?  
 8 A Yes.  
 9 Q And I've seen it and generally he left  
 10 around the 7:00 o'clock time frame, you know, maybe a  
 11 little earlier or a little later, but generally his  
 12 records show he left about 7:00. Is that the time  
 13 you generally left?  
 14 A I -- generally around 6:30.  
 15 Q Okay. So, you left close to the same  
 16 time?  
 17 A Right.  
 18 Q And when you generally left around 6:30,  
 19 about how long would it take you to get to the Benton  
 20 Express terminal in Atlanta, Georgia?  
 21 A About five hours.  
 22 Q About five hours even?  
 23 A Right.

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1 A The company.  
 2 Q And did you have anything to do with the  
 3 decision of setting it at 72?  
 4 A No.  
 5 Q Is that -- do you know if the company has  
 6 a policy whether or not that's the requirement for  
 7 all trucks at Benton Express?  
 8 A I have no idea.  
 9 Q Did anybody tell you it was set at 72 or  
 10 you just realized it when you were driving 72?  
 11 A I was told that it was turned up to 72  
 12 by --  
 13 Q When was it turned up to 72?  
 14 A Say that again.  
 15 Q When did it get turned up to 72?  
 16 A Maybe two months ago, three months.  
 17 Q Okay.  
 18 A Give or take.  
 19 Q Right. Okay. Prior to being turned up  
 20 to 72 -- another Benton Express trucker that we  
 21 deposed told us that his was set at approximately 62  
 22 miles per hour. Do you recall if that was your  
 23 setting prior to them turning it up?

25 (Pages 94 to 97)

(205) 458-1360